

EXHIBIT E

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JOSE A. VIRGEN MAGDALENO,
Individually and on Behalf of all
Others Similarly Situated

Plaintiffs

vs.

PCM CONSTRUCTION
SERVICES, LLC, MIGUEL
GUERRA AND DAWNNA L.
HOGAN-GUERRA

Defendants.

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Civil Action No. 4:12-CV-02862

**DEFENDANT'S SUPPLEMENT TO RESPONSES TO PLAINTIFFS' FIRST REQUEST  
FOR PRODUCTION TO DEFENDANT PCM CONSTRUCTION SERVICES, LLC**

To: Plaintiffs, Jose A. Virgen-Magdaleno, individually and on behalf of all others similarly situated, by and through his attorney of record, Kennard Attorneys at Law, Alfonso Kennard, Jr., 5433 Westheimer, Suite 825, Houston, Texas 77056.

COME NOW, Defendant, PCM Construction Services, LLC, a North Carolina limited liability company, and serves this Supplement to the Responses to Plaintiffs' First Request for Production sent on August 5, 2013. Also, please find attached additional documents bates labeled "PCM000038 – PCM000055."

Respectfully submitted,

**Prins Law Firm**  
4940 Broadway, Suite 108  
San Antonio, TX 78209  
(210) 820-0833  
(210) 820-0929 fax

By: /s/ Todd A. Prins

Todd A. Prins  
Texas State Bar No. 16330400  
Texas Southern District No. 13786  
**ATTORNEY FOR DEFENDANTS**

**CERTIFICATE OF SERVICE**

A true and correct copy of Defendant's Supplement to Responses to Plaintiff's First Request for Production has been forwarded by facsimile on the 20<sup>th</sup> day of August, 2013 to the following counsel of record:

KENNARD ATTORNEY AT LAW  
Kennard, Blankenship & Robinson, P.C.  
Alfonso Kennard, Jr.  
5433 Westheimer Road, Suite 825  
Houston, TX 77056  
Telephone (713) 742-0900  
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/s/ Todd A. Prins

Todd A. Prins

### **FIRST SET OF REQUEST FOR PRODUCTION**

#### **REQUEST FOR PRODUCTION NO.1:**

Produce all documents Defendant used or relied upon in answering Interrogatory No.2.

#### **RESPONSE:**

**Objection.** This request is unreasonably cumulative and duplicative and further is predicated upon an objectionable and improper interrogatory. Defendant further objects to the extent this request is overly broad and is not in compliance with the Federal Rules of Civil Procedure, which requires the request to specify the items to be produced or inspected, either by individual item or category, and describe with reasonable particularity each item and category. The proposed discovery goes beyond the subject matter of the case and reasonable expectations of obtaining information that will aid resolution of the dispute. This request, further, violates the Defendant's proprietary and privacy rights.

Without waiving the foregoing objections, this party would state please see documents produced as PCM0000001-00000037 & PCM00000038-00000055.

#### **REQUEST FOR PRODUCTION NO.2:**

Produce all documents Defendant used or relied upon in answering Interrogatory No.3, preferably in an electronic format that can be read and used in ordinary spreadsheet software, such as Excel.

#### **RESPONSE:**

**Objection.** This request is unreasonably cumulative and duplicative and further is predicated upon an objectionable and improper interrogatory. Defendant further objects to the extent this request is overly broad and is not in compliance with the Federal Rules of Civil Procedure, which requires the request to specify the items to be produced or inspected, either by individual item or category, and describe with reasonable particularity each item and category. The proposed discovery goes beyond the subject matter of the case and reasonable expectations of obtaining information that will aid resolution of the dispute. This request, further, violates the Defendant's proprietary and privacy rights.

Without waiving the foregoing objections, this party would state please see documents produced as PCM0000001-00000037 & PCM00000038-00000055.

#### **REQUEST FOR PRODUCTION NO.3:**

Produce all documents Defendant used or relied upon in answering Interrogatory No.6.

#### **RESPONSE:**

**Objection.** This request is unreasonably cumulative and duplicative and further is predicated upon an objectionable and improper interrogatory. Defendant further objects to the extent this request is overly broad and is not in compliance with the Federal Rules of Civil Procedure, which requires the request to specify the items to be produced or inspected, either by individual item or category, and describe with reasonable particularity each item and category. The proposed discovery goes beyond the subject matter of the case and reasonable expectations of obtaining information that will aid resolution of the dispute.

Without waiving the foregoing objections, this party would state please see documents produced as PCM0000001-00000037 & PCM00000038-00000055.

**REQUEST FOR PRODUCTION NO.4:**

Produce all documents Defendant used or relied upon in answering Interrogatory No. 10.

**RESPONSE:**

**Objection.** This request is unreasonably cumulative and duplicative and further is predicated upon an objectionable and improper interrogatory. Defendant further objects to the extent this request is overly broad and is not in compliance with the Federal Rules of Civil Procedure, which requires the request to specify the items to be produced or inspected, either by individual item or category, and describe with reasonable particularity each item and category. The proposed discovery goes beyond the subject matter of the case and reasonable expectations of obtaining information that will aid resolution of the dispute.

Without waiving the foregoing objections, this party would state please see documents produced as PCM0000001-00000037 & PCM00000038-00000055.

**REQUEST FOR PRODUCTION NO.5:**

Produce all documents Defendant used or relied upon in answering Interrogatory No. 12.

**RESPONSE:**

**Objection.** This request is unreasonably cumulative and duplicative and further is predicated upon an objectionable and improper interrogatory. Defendant further objects to the extent this request is overly broad and is not in compliance with the Federal Rules of Civil Procedure, which requires the request to specify the items to be produced or inspected, either by individual item or category, and describe with reasonable particularity each item and category. The proposed discovery goes beyond the subject matter of the case and reasonable expectations of obtaining information that will aid resolution of the dispute.

Without waiving the foregoing objections, this party would state please see documents produced as PCM0000001-00000037 & PCM00000038-00000055.

**REQUEST FOR PRODUCTION NO.6:**

Produce all documents Defendant used or relied upon in answering Interrogatory No. 13.

**RESPONSE:**

**Objection.** This request is unreasonably cumulative and duplicative and further is predicated upon an objectionable and improper interrogatory. Defendant further objects to the extent this request is overly broad and is not in compliance with the Federal Rules of Civil Procedure, which requires the request to specify the items to be produced or inspected, either by individual item or category, and describe with reasonable particularity each item and category. The proposed discovery goes beyond the subject matter of the case and reasonable expectations of obtaining information that will aid resolution of the dispute. This request, further, violates the Defendant's proprietary and privacy rights.

Without waiving the foregoing objections, this party would state please see documents produced as PCM0000001-00000037 & PCM00000038-00000055.

**REQUEST FOR PRODUCTION NO.7:**

Produce all documents Defendant used or relied upon in answering Interrogatory No. 14.

**RESPONSE:**

**Objection.** This request is unreasonably cumulative and duplicative and further is predicated upon an objectionable and improper interrogatory. Defendant further objects to the extent this request is overly broad and is not in compliance with the Federal Rules of Civil Procedure, which requires the request to specify the items to be produced or inspected, either by individual item or category, and describe with reasonable particularity each item and category. The proposed discovery goes beyond the subject matter of the case and reasonable expectations of obtaining information that will aid resolution of the dispute. This request, further, violates the Defendant's proprietary and privacy rights.

Without waiving the foregoing objections, this party would state please see documents produced as PCM0000001-00000037 & PCM00000038-00000055.

**REQUEST FOR PRODUCTION NO.8:**

Produce all documents Defendant used or relied upon in answering Interrogatory No. 16.

**RESPONSE:**

**Objection.** This request is unreasonably cumulative and duplicative and further is predicated upon an objectionable and improper interrogatory. Defendant further objects to the extent this request is overly broad and is not in compliance with the Federal Rules of Civil Procedure, which requires the request to specify the items to be produced or inspected, either by individual item or category, and describe with reasonable particularity each item and category. The proposed discovery goes beyond the subject matter of the case and reasonable expectations of obtaining information that will aid resolution of the dispute.

Without waiving the foregoing objections, this party would state please see documents produced as PCM0000001-00000037 & PCM00000038-00000055.

**REQUEST FOR PRODUCTION NO.9:**

All documents relating to the employment of Plaintiffs by Defendant.

**RESPONSE:**

Objection is made to this production request because it is overly broad and is not in compliance with the Federal Rules of Civil Procedure, which requires the request to specify the items to be produced or inspected, either by individual item or category, and describe with reasonable particularity each item and category.

Without waiving the foregoing objections, this party would state please see documents produced as PCM0000001-00000033 & PCM00000038-00000055.

**REQUEST FOR PRODUCTION NO. 10:**

Produce all documents indicating the hours Plaintiffs worked during the Relevant Time Period, including payroll records, time clock records, handwritten sheets, and work schedules. If possible, please produce them in an electronic format that can be read and used in ordinary spreadsheet software, such as Excel.

**RESPONSE:**

Objection is made to this production request because it is overly broad and is not in compliance with the Federal Rules of Civil Procedure, which requires the request to specify the items to be produced or inspected, either by individual item or category, and describe with reasonable particularity each item and category. Defendant further objects to the extent this request is unreasonably cumulative and duplicative.

Without waiving the foregoing objections, this party would state please see documents produced as PCM0000001-00000033 & PCM00000038-00000055.

**REQUEST FOR PRODUCTION NO. 11:**

Produce all documents indicating the amount of pay Plaintiffs received during the Relevant Time Period, preferably in an electronic format that can be read and used in ordinary spreadsheet software, such as Excel.

**RESPONSE:**

Objection. This request requires the responding party to create a document not in existence. A party is not required to produce a document or tangible thing unless it is within the person's possession, custody, or control. A document that does not exist is not within a party's "possession, custody, or control." Defendant further objects to this production request because it is overly broad and is not in compliance with the Federal Rules of Civil Procedure, which requires the request to specify the items to be produced or

inspected, either by individual item or category, and describe with reasonable particularity each item and category.

Without waiving the foregoing objections, this party would state please see documents produced as PCM0000001-00000033 & PCM00000038-00000055.

**REQUEST FOR PRODUCTION NO. 12:**

Produce all agreements between Defendant and Plaintiffs that were in effect during the Relevant Time Period.

**RESPONSE:**

Objection is made to this production request because it is overly broad and is not in compliance with the Federal Rules of Civil Procedure, which requires the request to specify the items to be produced or inspected, either by individual item or category, and describe with reasonable particularity each item and category.

Without waiving the foregoing objections, this party would state please see documents produced as PCM0000001-00000033 & PCM00000038-00000055.

**REQUEST FOR PRODUCTION NO. 13:**

Produce all documents that constitute, refer to, or relate to Defendant's policies, practices and guidelines for tracking and/or keeping records of hours worked or overtime hours worked by Plaintiffs during the Relevant Time Period.

**RESPONSE:**

Objection is made to this production request because it is overly broad and is not in compliance with the Federal Rules of Civil Procedure, which requires the request to specify the items to be produced or inspected, either by individual item or category, and describe with reasonable particularity each item and category.

Without waiving the foregoing objections, this party would state please see documents produced as PCM0000001-00000033 & PCM00000038-00000055.

**REQUEST FOR PRODUCTION NO. 14:**

Produce all documents reflecting or describing Defendant's organizational structure(s) or internal hierarchy during the Relevant Time Period.

**RESPONSE:**

Objection. This request is not relevant to the subject matter of the suit and will not lead to discovery of admissible evidence. The proposed discovery goes beyond the subject matter of the case and reasonable expectations of obtaining information that will aid resolution of the dispute.



Without waiving the foregoing objections, this party would state please see documents produced as PCM0000034-00000037.

**REQUEST FOR PRODUCTION NO. 15:**

Produce all documents that refer or relate to Plaintiffs' compensation, including but not limited to: wage rates, salary rates, bonuses, tips, overtime rates, and/or total compensation during the Relevant Time Period, including computer readable payroll data.

**RESPONSE:**

Objection is made to this production request because it is overly broad and is not in compliance with the Federal Rules of Civil Procedure, which requires the request to specify the items to be produced or inspected, either by individual item or category, and describe with reasonable particularity each item and category.

Without waiving the foregoing objections, this party would state please see documents produced as PCM0000001-00000033 & PCM00000038-00000055.

**REQUEST FOR PRODUCTION NO. 16:**

Produce all documents constituting, referring or relating to communications between Defendant and Plaintiffs regarding entitlement to overtime pay, the calculation of overtime pay, minimum wage, bonuses or other compensation.

**RESPONSE:**

Objection is made to this production request because it is overly broad and is not in compliance with the Federal Rules of Civil Procedure, which requires the request to specify the items to be produced or inspected, either by individual item or category, and describe with reasonable particularity each item and category.

Without waiving the foregoing objections, this party would state please see documents produced as PCM0000001-00000033 & PCM00000038-00000055.

**REQUEST FOR PRODUCTION NO. 17:**

Produce all insurance or indemnity agreements under which any person or entity may be liable to satisfy, or reimburse Defendant for, all or any part of any judgment that may be entered in this action.

**RESPONSE:**

None.

**REQUEST FOR PRODUCTION NO. 18:**

Produce copies of all IRS W-2 or 1099 forms issued to Plaintiffs that are in the possession of Defendant.

**RESPONSE:**

**Objection.** Defendant object on the basis and to the extent that the information requested is ambiguous, vague, and is possibly already in possession of Plaintiffs, would thus be unduly burdensome for Defendant to have to produce same, and the benefit of obtaining such information would likely be outweighed by the cost of the producing such documents. Defendant further objects on the basis and to the extent that the information requested would require the production of documents that are within the possession, custody, or control of a third party and are not subject to the possession, custody, or control of Defendant.

Without waiving the foregoing objections, this party would state please see documents produced as & PCM00000038-00000039.

**REQUEST FOR PRODUCTION NO. 19:**

Produce copies of all job applications submitted by Plaintiffs to Defendant.

**RESPONSE:**

Without waiving the foregoing objections, this party would state please see documents produced as PCM00000001-00000033.

**REQUEST FOR PRODUCTION NO. 20:**

Produce copies of all documents signed or authored by Plaintiffs.

**RESPONSE:**

Without waiving the foregoing objections, this party would state please see documents produced as PCM00000001-00000033 & PCM00000038-00000055.

**REQUEST FOR PRODUCTION NO. 21:**

Produce all correspondence between any Defendant and Plaintiffs.

**RESPONSE:**

Without waiving the foregoing objections, this party would state please see documents produced as PCM00000001-00000033 & PCM00000038-00000055.

**REQUEST FOR PRODUCTION NO. 22:**

Produce all employment manuals and written policies in effect during the Relevant Time Period.

**RESPONSE:**

Without waiving the foregoing objections, this party would state please see documents produced as PCM00000001-00000033 & PCM00000038-00000055.

**REQUEST FOR PRODUCTION NO. 23:**

Produce all settlement agreements, arbitration agreements, releases, or waivers between Defendant and any Plaintiff.

**RESPONSE:**

DEFENDANT'S SUPPLEMENT TO RESPONSES TO PLAINTIFF'S REQUEST FOR PRODUCTION  
CAUSE NO. [4:12-CV-02862]

None.

**REQUEST FOR PRODUCTION NO. 24:**

Produce all documents provided to Defendant or received by Defendant from the Department of Labor within the last 6 years.

**RESPONSE:**

Objection is made to this production request because it is overly broad and is not in compliance with the Federal Rules of Civil Procedure, which requires the request to specify the items to be produced or inspected, either by individual item or category, and describe with reasonable particularity each item and category. Defendant further objects to the extent this request is not relevant to the subject matter of the suit and will not lead to discovery of admissible evidence. The proposed discovery goes beyond the subject matter of the case and reasonable expectations of obtaining information that will aid resolution of the dispute.

Without waiving the above and foregoing objections such documents are being gathered and will be produced as they relate to the Plaintiff.

**REQUEST FOR PRODUCTION NO. 25:**

Produce all documents that concern any exemption from the Fair Labor Standards Act Defendant claims (if any) with respect to Plaintiffs.

**RESPONSE:**

Objection is made to this production request because it is overly broad and is not in compliance with the Federal Rules of Civil Procedure, which requires the request to specify the items to be produced or inspected, either by individual item or category, and describe with reasonable particularity each item and category.

**REQUEST FOR PRODUCTION NO. 26:**

Produce all correspondence concerning the pay of Defendant's employees during the Relevant Time Period.

**RESPONSE:**

Objection is made to this production request because it is overly broad and is not in compliance with the Federal Rules of Civil Procedure, which requires the request to specify the items to be produced or inspected, either by individual item or category, and describe with reasonable particularity each item and category. Defendant further objects to the extent this request is not relevant to the subject matter of the suit and will not lead to discovery of admissible evidence. The proposed discovery goes beyond the subject matter of the case and reasonable expectations of obtaining information that will aid resolution of the dispute.

Without waiving the foregoing objections, this party would state please see documents produced as & PCM00000038-00000055.

**REQUEST FOR PRODUCTION NO. 27:**

DEFENDANT'S SUPPLEMENT TO RESPONSES TO PLAINTIFF'S REQUEST FOR PRODUCTION  
CAUSE NO. [4:12-CV-02862]

True and correct copies of documents concerning Defendant's net worth, including but not limited to, audited financial statements, federal and state income tax returns and bank and brokerage account statements for the past three years.

**RESPONSE:**

Objection is made to this production request because it is overly broad and is not in compliance with the Federal Rules of Civil Procedure, which requires the request to specify the items to be produced or inspected, either by individual item or category, and describe with reasonable particularity each item and category. Defendant further objects to the extent this request is not relevant to the subject matter of the suit and will not lead to discovery of admissible evidence. The proposed discovery goes beyond the subject matter of the case and reasonable expectations of obtaining information that will aid resolution of the dispute.

**REQUEST FOR PRODUCTION NO. 28:**

Produce documents you believe support your contention that "Plaintiffs have failed to comply with all procedural requirements for maintaining this action."

**RESPONSE:**

Objection. This request requires the responding party to create a document not in existence. A party is not required to produce a document or tangible thing unless it is within the person's possession, custody, or control. A document that does not exist is not within a party's "possession, custody, or control." Defendant further objects to the extent this production request because it is overly broad and is not in compliance with the Federal Rules of Civil Procedure, which requires the request to specify the items to be produced or inspected, either by individual item or category, and describe with reasonable particularity each item and category.

Without waiving the foregoing objections, this party would state please see documents produced as PCM0000001-00000033 & PCM00000038-00000055.

**REQUEST FOR PRODUCTION NO. 29:**

Produce all documents you believe support your contentions that "Defendant acted at all times in good faith and had reasonable grounds for believing that their conduct complied at all times with applicable laws and regulations."

**RESPONSE:**

Objection. This request requires the responding party to create a document not in existence. A party is not required to produce a document or tangible thing unless it is within the person's possession, custody, or control. A document that does not exist is not within a party's "possession, custody, or control." Defendant further objects to the extent this production request because it is overly broad and is not in compliance with the Federal Rules of Civil Procedure, which requires the request to specify the items to be produced or inspected, either by individual item or category, and describe with reasonable particularity

each item and category. Objection is made to this production request because it is overly broad and is not in compliance with the Federal Rules of Civil Procedure, which requires the request to specify the items to be produced or inspected, either by individual item or category, and describe with reasonable particularity each item and category.

Without waiving the foregoing objections, this party would state please see documents produced as PCM0000001-00000033 & PCM00000038-00000055.

**REQUEST FOR PRODUCTION NO. 30:**

Produce all documents you believe support your contention that "Defendant will be entitled to a credit toward any payment obligation by prior compensation and/or other prior payment."

**RESPONSE:**

Objection is made to this production request because it is overly broad and is not in compliance with the Federal Rules of Civil Procedure, which requires the request to specify the items to be produced or inspected, either by individual item or category, and describe with reasonable particularity each item and category.

Without waiving the foregoing objections, this party would state please see documents produced as PCM0000001-00000033 & PCM00000038-00000055.

**REQUEST FOR PRODUCTION NO. 31:** Produce all documents you believe support your contention that "Plaintiffs may waive the right, if any, to pursue their claims by reason of their own actions, omissions, and course of conduct, including but not limited to failure to comply with applicable employment policies and procedures."

**RESPONSE:**

Objection is made to this production request because it is overly broad and is not in compliance with the Federal Rules of Civil Procedure, which requires the request to specify the items to be produced or inspected, either by individual item or category, and describe with reasonable particularity each item and category.

Without waiving the foregoing objections, this party would state please see documents produced as PCM0000001-00000033 & PCM00000038-00000055.

**REQUEST FOR PRODUCTION NO. 32:**

Produce all settlement agreements, arbitration agreements, releases, or waivers between Defendant and any individuals who were employed by Defendant during the Relevant Time Period.

**RESPONSE:**

Objection is made to this production request because it is overly broad and is not in compliance with the Federal Rules of Civil Procedure, which requires the request to specify the items to be produced or inspected, either by individual item or category, and describe

with reasonable particularity each item and category. Defendant further objects to the extent this request is not relevant to the subject matter of the suit and will not lead to discovery of admissible evidence. The proposed discovery goes beyond the subject matter of the case and reasonable expectations of obtaining information that will aid resolution of the dispute.

In regard to the Plaintiff herein, and without waiving the foregoing objections, this party would state please see documents produced as PCM0000001-00000033 & PCM00000038-00000055.

**REQUEST FOR PRODUCTION NO. 33:**

Any documents referring to the names and addresses of individuals who were employed by Defendant during the Relevant Time Period.

**RESPONSE:**

Objection is made to this production request because it is overly broad and is not in compliance with the Federal Rules of Civil Procedure, which requires the request to specify the items to be produced or inspected, either by individual item or category, and describe with reasonable particularity each item and category. Defendant further objects to the extent this request is not relevant to the subject matter of the suit and will not lead to discovery of admissible evidence. The proposed discovery goes beyond the subject matter of the case and reasonable expectations of obtaining information that will aid resolution of the dispute.

**REQUEST FOR PRODUCTION NO. 34:**

All documents reflecting the relationship between Miguel Guerra and PCM, including, but not limited to, pay checks or pay records, employment contracts, memoranda, corporate documents, minutes of Board of Directors meetings, profit and/or loss statements, income distribution statements, stock certifications, correspondence or tax records.

**RESPONSE:**

Objection is made to this production request because it is overly broad and is not in compliance with the Federal Rules of Civil Procedure, which requires the request to specify the items to be produced or inspected, either by individual item or category, and describe with reasonable particularity each item and category. Defendant further objects to the extent this request is not relevant to the subject matter of the suit and will not lead to discovery of admissible evidence. The proposed discovery goes beyond the subject matter of the case and reasonable expectations of obtaining information that will aid resolution of the dispute.

Without waiving the foregoing objections, this party would state please see documents produced as PCM00000033-00000037.

**REQUEST FOR PRODUCTION NO. 35:**

All documents reflecting the relationship between Dawnna Hogan Guerra and PCM, including, but not limited to, pay checks or pay records, employment contracts, memoranda, corporate documents, minutes of Board of Directors meetings, profit and/or loss statements, income distribution statements, stock certifications, correspondence or tax records.

**RESPONSE:**

Objection is made to this production request because it is overly broad and is not in compliance with the Federal Rules of Civil Procedure, which requires the request to specify the items to be produced or inspected, either by individual item or category, and describe with reasonable particularity each item and category. Defendant further objects to the extent this request is not relevant to the subject matter of the suit and will not lead to discovery of admissible evidence. The proposed discovery goes beyond the subject matter of the case and reasonable expectations of obtaining information that will aid resolution of the dispute.

Without waiving the foregoing objections, this party would state please see documents produced as PCM0000033-00000037.